IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.T.SANKARAN

FRIDAY, THE 14TH DECEMBER 2007 / 23RD AGRAHAYANA 1929

CRP.No. 1835 of 2002

(IA.3142/2002 IN OS.828/94 OF II ADDL.MUNSIFF'S COURT, ERNAKULAM)

REVN. PETITIONERS/ PETITIONERS/PLAINTIFFS:

1. THRESSIAKUTTY, W/O. DEVASSY, PAZANILATH, KOCHAPPILLY ROAD, PONNURUNNI, VYTTILA P.O., KANAYANNUR TALUK.
2. JOSE, S/O. DEVASSY, DO. DO.
3. JAMES, S/O. DEVASSY, DO. DO.

BY ADV. SRI.DINESH R.SHENOY

RESPONDENTS/ RESPONDENTS/DEFENDANTS.

1. THE STATE OF KERALA REP. BY THE DISTRICT COLLECTOR, ERNAKULAM.
2. THE TAHSILDAR, KANAYANNUR TALUK, ERNAKULAM.
3. THE VILLAGE OFFICER, POONITHURA VILLAGE.
4. BAHULEYAN, S/O. UNNIATHI, NEDUMPARAMBIL, VYTTILA P.O., KANAYANNUR TALUK.
5. SANKARANKUTTY OF -DO- - DO-.

BY GOVERNMENT PLEADER ADV. SHRI THOMAS JOHN AMBOOKEN.

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 14/12/2007, ALONG WITH F.A.O NO. 166 OF 2004 , THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO. 1835 OF 2002

ORDER ON C.M.P.NO. 4466 OF 2002 IN C.R.P.NO. 1835 OF 2002

DISMISSED.

14.12.2007 SD/- K.T. SANKARAN, JUDGE.

/TRUE COPY/

P.A. TO JUDGE.

K.T. SANKARAN, J.

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C.R.P. No. 1835 OF 2002

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F.A.O. No. 166 OF 2004.

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Dated this the 14th December, 2007

O R D E R

The plaintiffs in O.S.No. 828 of 1994 on the file of the court of the II Addl. Munsiff, Ernakulam are the petitioners in the Revision as well as the appellants in the Appeal. The suit was dismissed for default. The plaintiffs filed an application under Order IX Rule 9 of the Code of Civil Procedure . Since there was delay of 110 days in filing the application, an application to condone the delay was filed. The trial court dismissed the application for condonation of delay and consequently dismissed the application filed under Order IX Rule 9 of the Code of Civil Procedure. The Civil Revision Petition is filed against the order in I.A.No. 3142 of 2002, the application for condonation of delay. Against the order dismissing the application filed under Order IX Rule 9 of the Code of Civil Procedure, the plaintiffs had filed C.M.A.No.969 of 2002 before the V Addl. District Court, Ernakulam. That appeal was withdrawn to this court and it is re-numbered as F.A.O.No. 166 of 2004.

2. It is stated that when the suit was taken up for trial, the second petitioner was laid up and he could not attend the court . The first petitioner is an aged lady who was unable to depose before the court. A application was filed for adjournment of the case by ten days. The trial court dismissed that application and accordingly the suit was dismissed for default. It is stated that a letter was sent from the advocate's office informing about the dismissal of the suit. It is stated that the letter was not received by the second plaintiff. Another letter was sent by the counsel which was received by the second plaintiff only in April, 2002. At that time, the first plaintiff was admitted in the

hospital due to "blood clotting in the brain and high blood pressure " and was in the intensive care unit. These are the reasons stated for the delay having been occasioned. The court below dismissed the application on the ground that there are three plaintiffs and therefore, any one of them could be present before the court. It was also held that no satisfactory explanation was offered as to why at least one of the plaintiffs could not be present in court.

3. In the facts and circumstances, I am of the view that the delay should have been condoned by the court below. An application was filed for adjournment of the case stating that the second plaintiff was ill. The first plaintiff being a very old lady, could not be expected to be present before the court to adduce evidence. Though nothing is stated about the third petitioner, it is clear from the affidavit that the second petitioner was conducting litigation. In the facts and circumstances of the case, I am of the view that the delay can be condoned on payment of cost of Rs.1,000/- to respondents 1 to 3 in one set.

In the result, the Civil Revision Petition as well as the F.A.O. are allowed. The orders impugned are set aside and the suit is restored to file on condition that the petitioners pay a sum of Rs. 1,000/- as cost to respondents 1 to 3/defendants 1 to 3, within a period of one month from today.

K.T. SANKARAN,
JUDGE.

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K.T. SANKARAN, J.

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C.R.P. No. 1835 OF 2002
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F.A.O. 166 OF 2004

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Dated this the 14th December, 2007

O R D E R